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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,893	10/04/2006	Patrick Boesch	Q95013	8633
23373 7590 06/01/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER SPURLOCK, BRETT SHANE				
ART UNIT 3742		PAPER NUMBER		
NOTIFICATION DATE 06/01/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/595,893

**Applicant(s)**

BOESCH ET AL.

**Examiner**

BRETT SPURLOCK

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date 5/18/06

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it is longer than 150 words and contains an extraneous word such as invention. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the multiple cavities (claim 29) must be shown as such or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claims 1-33 are objected to because of the following informalities: Claims 1-33 contain the misspelling "characterised" which should be spelled "characterized". Claim 16 contains the misspelling (as per standard American English) "colour" which should be spelled "color". Claim 22 contains claim language in parenthesis but it is noted that the use of parenthesis is limited for the reference numerals. Claim 23 contains the misspelling (as per standard American English) "odours" which should be spelled "odors". Claim 28 contains the misspelling (as per standard American English) "flavourings" which should be spelled "flavorings". In claim 30 the word "centigrade" should be placed after "195-205" so as to avoid misinterpretation of the recitation to mean angular degrees (as recited in claims 4-5).

Appropriate correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 states, "the first angle ( $\alpha$ ) is about twice as large as said second angle ( $\beta$ )" but this is in contradiction with that stated about the angles in independent claim 1 wherein the first angle is recited to be smaller than the second angle.

***Claim Rejections - 35 USC § 102***

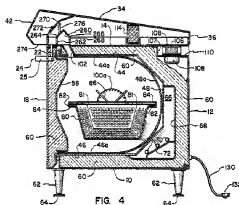
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 10, 14-15, 17-19, 21-23, 25-27 and 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Rijswijck (US 4865864 A). Rijswijck discloses an air heated oven where: Oven (1) for heating foodstuff, in particular french fries, by means of hot air (col. 3, lines 45-46) circulating in a substantially closed circle (col. 3, line 47), wherein circulation of the air is forced, preferably by a fan or a blower (92 and 96), characterized in that the foodstuff is contained in at least one receptacle (80) at least one or two of the walls (Fig. 3-4) of which are penetrable to at least parts of the circulating hot air, that the receptacle is at least partially enclosed towards its penetrable walls by walls (44 and/or 46 and/or 48) of a container, wherein there is a spacing

between at least one of the respective walls of the receptacle and at least one of the walls of the container (as defined by 44 and 46 and 48), that hot air is entering the receptacle and/or the container preferably substantially from an upper side (Fig. 5; 74), and that in the region into which the hot air is entering the receptacle and/or the container, a side wall (48 and/or 48a) of the container is inclined with respect to a horizontal plane by a first angle (see right examiner added angle of the drawing below) and a corresponding penetrable side wall of the receptacle is inclined with respect to said horizontal plane by a second angle (see left examiner added angle of the drawing below), wherein the first angle is about half as large than the second angle (as shown in the examiner edited drawing); that hot air is entering the receptacle and/or the container substantially from a vertical direction perpendicular to said horizontal plane (col. 3, lines 53-56 and 63-66); the container comprises a horizontal bottom wall, a vertical backside wall and two vertical side walls aligned substantially parallel to each other, as well as a tilted front wall all of which are not penetrable to the hot air and which are preferentially made of coated or uncoated metal (as seen in Fig. 3-4); a heating cavity (Fig. 5; 66); the filtering means are a semi-permeable membrane permeable to air and steam but not to condensed water (abstract "particles"); microwave heating means (col. 1, lines 15-40); control means (26) for automatically controlling the heating means and a latch that will prevent the opening of the device when in operation (col. 7, lines 10-24); two baskets which provide the means for cooking multiple items without spilling or cross-contamination (col. 4, lines 8-35); and cooking will change the chemical composition of the food and thus introduce new flavors into it.



**Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rijswijk (US 4865864 A). Rijswijk discloses the claimed invention but does not disclose the specific angular ranges of the first and second angles or the specific distance between the bottom grid and the bottom wall; however, Rijswijk discloses that the device is designed to impart a swirling motion to the jets of air (abstract) and that this is accomplished by utilizing a particular angle of the nozzles relative to the walls (col. 3 line 55 – col. 4 line 6) and the distance between the bottom grid and bottom wall appears to be at least 10 mm (as shown in Fig. 3-4). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the angles of the respective angles of the walls in the range of 60° - 80° for the first angle or from 30°

to 50° for the second angle or for the second angle to be about twice as large as the first angle or for the distance between the bottom mesh and wall elements to be 10 mm or greater in order to optimize the amount of heated air that comes into contact with the material to be heated as per experimentation and/or simulations.

10. Claims 6-8, 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rijswijck (US 4865864 A) in view of Shimansky et al (US 6427583 B1). Rijswijck discloses the claimed invention but does not make explicit that the receptacle is made out of metal or that vibrations are incorporated. Shimansky discloses that the receptacle is made out of metal (col. 5, line 27) and a means for vibrating the device (Fig. 4A-4C; 4, 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used metal and a vibration system as disclosed by Shimansky for the mesh receptacle disclosed by Rijswijck to make it heat resistant and to move it to move the items in the receptacle. Rijswijck further discloses a horizontal grid portion (82) which serves as a nose which positions the receptacle (see fig. 3-4).

11. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rijswijck (US 4865864 A) in view of Marszalek et al (US 5970853 A). Rijswijck discloses the claimed invention except that the basket/receptacle is slid in an out. Marszalek discloses the channels (50) over which the receptacle may be slid in and out. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the receptacle and container disclosed by Rijswijck to



include rails/channels to facilitate loading/unloading. Rijswijck further discloses an air filtering means (114).

12. Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rijswijck (US 4865864 A) in view of Hull et al (US 4961849 A) and in view of Pippel et al (US 5762667 A). Rijswijck discloses the claimed invention except for the attachment by means of magnets and an indication of means for indicating required changing of the filter. Hull discloses a filter that is magnetically attached (abstract) but does not disclose an indication means. Pippel discloses an indication means for indicating required changing (col. 7, lines 37-40). It would have been obvious to one of ordinary skill in the art at the invention was made to provide magnets to the filter disclosed by Rijswijck in order to attach the filter in an easily replaceable manner and to use a detection/indication system to when it needs to be replaced.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRETT SPURLOCK whose telephone number is (571)270-1387. The examiner can normally be reached on M-TH, M-F, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 5712724780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRETT SPURLOCK/  
Examiner, Art Unit 3742

5/10/2010

/SANG Y PAIK/  
Primary Examiner, Art Unit 3742